

IN THE SUPREME COURT OF THE STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

In the Matter of:)	
)	
POLICIES AND PROCEDURES FOR)	Administrative Directive
RESPONDING TO PUBLIC REQUESTS)	<u>No. 2013 - 15</u>
FOR ACCESS TO RECORDS)	(Replacing Administrative
MAINTAINED BY THE)	Directive No. 2009-07)
ADMINISTRATIVE OFFICE OF THE)	
COURTS)	
)	

On April 1, 2009, the Administrative Director adopted policies and procedures for the Administrative Office of the Courts to follow in responding to public records requests through Administrative Directive No. 2009-07. Since that time, several pertinent provisions of the governing rule, Arizona Supreme Court Rule 123, have been amended, and the agency's experience with records requests has demonstrated a need to revise the process. Therefore,

IT IS DIRECTED that the amended policies and procedures attached hereto are adopted and replace the original policy, General Administration Policy 3.10 of the Administrative Office of the Courts Policy Manual.

IT IS FURTHER DIRECTED that the attached policies and procedures are effective on and after the date of signature.

Dated this 1st day of July, 2013.

David K. Byers
Administrative Director

Policies and Procedures for
Responding to Public Requests for Access to Records
Maintained by the Administrative Office of the Courts

- A. Authority.** Supreme Court Rule 123, Public Access to Court Records, governs public access to the records of all courts and administrative offices of the judicial department of the State of Arizona, including the Administrative Office of the Courts (AOC).
- B. Scope.** These procedures apply to the processing of all requests for records received by the AOC and any of its divisions or units from individuals, media organizations, and other members of the general public. This policy does not govern requests for records received from other government agencies or private organizations in order to serve a public purpose. Division directors have discretion to respond to routine requests from other public agencies, depending upon resource availability.

This policy does not apply to electronic records maintained by the AOC Information Technology Division on behalf of local courts such as case management system data and email. Requests for access to these records shall be referred to the local custodian of the court record for a response.

- C. Records Custodian.** The AOC division directors shall be the custodians of records maintained by each division and are responsible for processing all records requests they receive. The deputy administrative director shall be the custodian of records maintained by the Executive Division.
- D. Responsibilities.** Each division director may designate one or more staff to assist in processing requests for records, but shall not delegate responsibility for approving or denying records requests. The directors shall be responsible for the following:
1. Receiving, responding to, and approving or denying all requests for records of their operations in compliance with the provisions of Rule 123.
 2. Coordinating responses to requests for records of the operations of more than one division. If the directors cannot determine which division should have primary responsibility for a particular response, the deputy administrative director shall designate the primary division.
 3. Categorizing the records relating to divisions operations, identifying entire records or parts of records that are closed to public inspection, and stating the

reason for each records closure.

4. Consulting, as appropriate, with the chair of the Commission on Judicial Performance Review, the Commission on Appellate Court Appointments or a Commission on Trial Court Appointments.

E. Processing requests for access to AOC records.

1. An applicant may request a copy of any AOC record orally or in writing. A records manager may require the records request be submitted in writing if details are needed to identify the records sought. Applicants who request records for non-commercial purposes shall not be required to disclose their intended use of the records, but may be required to confirm that their intended use of the records is not for commercial purposes (Rule 123(f)(3)(A)).
2. Upon receipt of a request for access to any record, the division director shall first determine whether the request should be referred to a different division. If not, the director shall:
 - a. Offer the approved form for requesting the record in writing, attached in Appendix C, and clarify the request in writing as needed.
 - b. If the applicant requests copies of records, determine whether the applicant has a commercial purpose as specified in Rule 123(b)(2), (f)(3)(A)&(B), and (g)(3).
 - c. Determine whether the requested record(s) exists. As provided by Rule 123(c)(4), the AOC is not required to “index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting or redacting confidential information from a record, or reproducing a record in non-original format, is not deemed to be creating a new record.” In addition, nothing in this policy shall require conversion of paper records to electronic records or re-formatting of an existing record. New paper or electronic records shall not be created in response to a records request without the prior approval of the administrative director.
 - d. If the records requested are available from a supreme court webpage, before providing the record in paper format or reproducing the record electronically, inquire whether the applicant can and wishes to access the records independently online.
 - e. If the records contain public information and confidential information that can be redacted, redact the confidential information in a manner that discloses the nature and length but not the content of the confidential information and, upon request, the authority for the redaction (Rule 123(c)(2)(C)).

- f. If the request will be granted, advise the applicant of the following:
- (1) The estimated cost of reproducing the record as provided in subsection (F) of this policy (Rule 123(f)(3)); and
 - (2) If the applicant is requesting a copy of a record, the estimated date and time when the copies can be made available, if they cannot be reproduced while the applicant waits. Records should be provided in a reasonable period of time, based on their availability and the resources needed to produce them.
 - (3) Records may be provided in person, by mail if postage is prepaid, or by e-mail if the record is in electronic form.
3. The division director shall obtain payment for all fees or estimated fees from the applicant before complying with any records request.
 4. Each division shall maintain a current list of confidential division records. In deciding whether to approve or deny a request, the division director shall review Rule 123 (c)(2)-(4) and (e)(1)-(15), and the confidential division records list. The excerpted rule provisions are attached to this policy as Appendix A.
 5. If a director believes the request should be denied in whole or in part, and the question whether to withhold the records at issue has not been previously resolved, the director shall consult with an attorney in the Legal Services Office before deciding whether to deny the request.
 6. If a director decides to deny a records request in whole or in part, and the question whether to withhold the records at issue has not been previously resolved, the director shall consult with the deputy administrative director to determine if an alternative means of access to the records may be provided to the applicant.
 7. If an alternative means of access cannot be identified and the division director decides to deny the request, the division director shall provide the applicant with a written explanation of the reason(s) for denial and notice of the opportunity to seek reconsideration by the deputy administrative director.
 8. A request for reconsideration shall be made in writing to the division director within ten (10) business days of a denial. The division director shall transmit the request to the deputy administrative director within three (3) business days. If the deputy administrative director denies the request, the deputy administrative director shall provide the applicant with a written explanation of the reason(s) for denial and notice of the applicant's right to request administrative review by the administrative director, acting as the chief justice's designee, pursuant to Rule

123 (f)(5)(A).

F. Fees. An applicant shall pay the fees set forth in this section for copies of any AOC record. Fees shall be paid by check or money order to the division responding to the request. Payments shall be processed in accordance with the Financial Office's Cash Receipts and Deposits procedures, attached as Appendix B.

1. Requests Not for Commercial Purposes. No fee shall be charged for either searching for a record or for redacting confidential information from an otherwise non-confidential paper record (123(f)(3)(A)). For copies of records in paper medium, the fee shall be \$0.50 per page. For copies of existing electronic records that are created in the normal course of business, the fee shall be the actual cost of any materials provided (e.g., CD). No copy fee shall be charged for electronic records provided by email.
2. Requests for Commercial Purposes. The fee shall be the actual cost of location, retrieval, and reproduction of the requested records, including redaction costs, staff time, equipment, and materials, plus \$0.50 per page- (123(f)(3)(B)).
3. Requests for Data Compilation. If the deputy administrative director has approved its production, the fee for responding to a request for electronic records described in subsection (E)(2)(c) above shall be the actual cost incurred to comply with the request including staff time, computer time, programming costs, equipment, materials, and supplies (123(g)(3)). The division director shall maintain a copy of any customized electronic record provided in response to a public records request. The copy shall be saved in the AOC electronic document management system with the following required metadata tags: (1) Document Type Group: Public Records; (2) Document Type: Customized Response to Public Records Request; (3) Title: description of the customized information provided; (4) Date of response: date the record was produced for the requesting party; (5) Recipient: name(s) of recipient(s); and (6) Division: name of AOC division producing the customized record.
4. Publications. No copy fee shall be charged if the record requested was originally produced with the intent that it be distributed without charge because of its training, educational or informational benefits, and the party making the request is a member of the target group(s) to whom the publication was originally intended to be distributed.
5. Fee Exceptions. No copy fee shall be charged for a record requested by:
 - a. The State of Arizona or an Arizona county, city, town or political subdivision of an Arizona county.
 - b. A commission, board or department of the State of Arizona or an Arizona county, city, town or political subdivision of an Arizona county.

- c. An official of the State of Arizona or an Arizona county, city, town or political subdivision of an Arizona county, who is a party to an action in his official capacity.
- d. Persons obtaining copies that are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which will be presented to the United States or a bureau or department thereof, in accordance with A.R.S. §39-122.

APPENDIX A
Supreme Court Rule 123 Excerpts

Rule 123

(c) General Provisions

* * *

(2) Creation, Production and Management of Records.

* * *

(C) Upon request, the custodian shall reproduce any record containing public information that would otherwise be closed, by redacting all confidential information from the record unless release of the entire record is prohibited by law. Records that are reproduced after redaction shall contain a disclosure that they were redacted, unless such disclosure would defeat the purpose of the redaction. Identification of redacted records shall include a description of the nature and length of the matters contained therein, unless the description, if given, constitutes a disclosure of confidential information. Upon request, the custodian shall identify the legal authority for the redaction.

(3) Confidential and Personal Financial Records. Documents containing social security, credit card, debit card, or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order.

(4) New Records. The court is not required to index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting or redacting confidential information from a record, or reproducing a record in non-original format, is not deemed to be creating a new record as defined herein.

* * *

(e) Access to Administrative Records.

All administrative records are open to the public except as provided herein:

(1) Employee Records. Records maintained concerning individuals who are employees or who perform volunteer services are closed except for the following information:

(A) Full name of individual;

- (B) Date of employment;
- (C) Current and previous job titles and descriptions, and effective dates of employment;
- (D) Name, location and phone number of court and/or office to which the individual has been assigned;
- (E) Current and previous salaries and dates of each change;
- (F) Name of current or last known supervisor; and
- (G) Information authorized to be released by the individual to the public unless prohibited by law.

(2) *Applicant Records.* Unless otherwise provided by law, records concerning applicants for employment or volunteer services are open to the public, after the names, home addresses, telephone numbers, social security numbers, and all other personally identifying information have been redacted, except that the names of applicants who are final candidates shall be disclosed.

(3) *Judicial Case Assignments.* Records regarding the identity of any appellate judge or justice assigned to prepare a written decision or opinion until the same is filed are closed.

(4) *Security Records.* All security plans, codes and other records that provide for the security of information, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal releases, trespass, or physical abuse or violence, are closed.

(5) *Procurement Records.* Procurement and bid records are open to the public except as provided herein:

(A) *Sealed Bids.* Sealed bid records are closed to the public prior to opening the bids at the time specified in the bid request.

(B) *Invitation for Bid.* Bid records submitted under Rule 18 of the Judicial Branch Procurement Code or equivalent rules shall remain closed to the public after opening until a contract is signed, except that the amount of each bid and the name of each bidder shall be recorded and available for public inspection.

(C) *Competitive Sealed Proposals and Requests for Qualifications.* Records containing competitive sealed proposals and requests for qualification submissions under Rules 26 or 35 of the Judicial Branch Procurement Code or equivalent rules, shall remain closed to

the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(D) Trade Secrets. Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

(6) *Preliminary and Draft Reports Concerning Court Operations; Pre-decisional Documents.* Final administrative documents and reports concerning the operation of the court system are open for public inspection and copying by the custodian on court premises. Preliminary drafts of such reports, and pre-decisional documents relating to court operations, shall be open once such draft reports and such pre-decisional documents are circulated to any court policy advisory committee or the public for comment.

(7) *Patron Records.* Records maintained in any court law library, clerk's office or court that link a patron's name with materials requested or borrowed by the patron, or that link a patron's name with a specific subject about which the patron has requested information or materials are closed. This provision shall not preclude a library, clerk's office or court from requiring that the request specify any commercial use intended for the records as provided in paragraph (f) of this rule.

(8) *Remote Electronic Access User Records.* Data or information that would disclose that a user of a remote electronic access system has accessed a particular court record is closed. Record access information shall be accessible by the public only on a showing of good cause pursuant to the process set forth in paragraph (f) of this rule.

(9) *Attorney and Judicial Work Product.*

(A) The legal work product and other records of any attorney or law clerk employed by or representing the judicial branch, that are produced in the regular course of business or representation of the judicial branch are closed unless disclosed by the court.

(B) All notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the course of deliberations on rule or administrative matters are closed.

(10) *Juror Records*. The home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.

(11) *Proprietary and Licensed Material*. Computer programs or other records that are subject to proprietary rights or licensing agreements shall only be disclosed in accordance with the terms and conditions of the applicable agreements and licenses, or by court order. No records shall be closed to the public solely because access is provided by programs or applications subject to licensing agreements, or because they are subject to proprietary rights.

(12) *Copyrighted Documents and Materials*. Documents and materials produced and copyrighted by the court are open to public inspection but may not be re-published without proper authorization from the court.

(13) *Judicial Branch Training Materials and Records*. Evaluation materials and records generated by participants in judicial education programs such as test scores, educational assessments, practical exercise worksheets, and similar materials are closed.

(14) *Certification Records*. Proprietary materials required to be submitted to the Supreme Court by applicants for certification or licensing are closed. Applicants for certification or licensure shall be responsible for clearly identifying any material they consider to be proprietary at the time the material is submitted.

(15) *Employee Discipline Records*. All records concerning employee misconduct or discipline are closed except on a showing of good cause for release of a record as determined in the process provided in paragraph (f)(5) of this rule. These records may be accessed by court personnel for official purposes and by an employee who is the subject of the discipline, to the extent such access is permitted or required by applicable personnel policies.

Appendix B
AOC Financial Office
Cash Receipts and Deposits Procedures (Rev2/21/02)
(excerpted)

1. All cash/checks must be maintained in a safe or locked drawer until they are deposited with the bank.
2. Divisions are required to endorse all checks “for deposit only” and to use the *Cash Receipts Log* (revised 1/22/98) which is pre-numbered and has the AOC Title. Divisions will keep the pink copy of the log for their records, and send the white and yellow copies with the checks to be deposited. The Finance Office cannot accept checks from the divisions without a *Cash Receipts Log*. The Finance Office will notify the division if a Cash Receipts Log is not attached.
3. All *Cash Receipts Logs* and checks must be verified and logged by the Finance Office before coding or depositing. This procedure follows minimum accounting standards. (Separation of duties)



Supreme Court
STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

Public Records Reproduction Request

I request that the Supreme Court furnish copies of the following public records:

Indicate whether you intend to use these records for a commercial purpose. "Commercial purpose" is defined as the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public records for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of such public record. (Arizona Supreme Court Rule 123).

My intended use of the records will be:

_____ Non-Commercial (*fee is \$0.50 per page*)

_____ Commercial (*fee is \$0.50 per page plus the cost of obtaining the original or copies of the records and all redaction costs; and the time, equipment and staff used in producing such reproduction*)

If request is for a commercial purpose, disclose the commercial purpose and specific use intended for the records:

Total Number of Pages: _____

Total Amount Payable: _____

I certify that the requested records shall be used only for the purpose indicated above and that the information provided is a true and accurate statement.

Signature: _____ Date: _____

Printed Name: _____ Company: _____

Address: _____